

## REMARKS

Currently, claims 1 through 14 are pending. The Action included a Restriction and/or Election Requirement under 35 U.S.C. §121 and §372 and required an election of one of the following groups of claims.

“Group I: Claims 1-6, drawn to a pharmaceutical composition comprising a single crystal of a pharmaceutically accepted crystal lattice component, and an active pharmaceutical ingredient.

Group II: Claims 7-9, drawn to methods of preparing a composition of Group One or stabilizing an active pharmaceutical ingredient.

Group III: Claim 10, drawn to a method of administering an active pharmaceutical ingredient.”

The Action also states that, “Claims 1 – 13 are generic and claim 14 is sub-generic.” Furthermore the Action states that, “This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.” The Action also states that, “The species are those specific compounds mentioned in the Markush group of instant claim 14.”

The Action requires that the Applicant “elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable.” And further that,

“the reply must also identify the claims readable on the elected species... .” The Action further recites that, “Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all of the limitations of an allowed generic claim as provided by 37 CFR 1.14(1).”

### **ELECTIONS WITH TRAVERSE**

The Applicant elects claims 1- 6 of Group I with traverse. It is respectfully submitted that claims 1-14 could be examined together without imposing undue burden. As stated in §803 of the Manual of Patent Examining Procedures, “[I]f – the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits even though it includes claims to distinct or independent inventions.” Under this standard, it is believed that a joint search of Groups I through III and the Markush group recited in claim 14 would not impose a serious burden on the examination of this application.

The Applicant elects lactose of amended claim 14, with traverse, as the species, as stated in the action as “[The] single species to which the claims shall be restricted if no generic claim is held to be allowable.” This reply also identifies claim 1 group I and claims 2-6 of group 1 as readable on the elected species lactose .

The election, with traverse, of lactose is made with the understanding that claims 1-6 read on at least the species lactose. Moreover, the election of lactose is made with

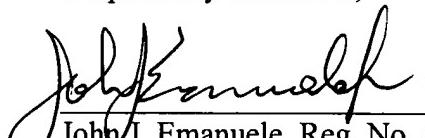
the understanding that claims 1-6 are generic to all species and that upon allowance of one or more of the generic claims consideration will be given to all species.

It is also respectfully submitted that examination of all compounds in the Markush group of amended claim 14 would not impose an undue burden on the examination process. As stated in §803.02 of the Manual of Patent Examining Procedures,

"If the members of the Markush group are sufficiently few in number or so closely related that the search and examination of the entire claim can be made without serious burden, the examiner must examine all the members of the Markush group in the claim on the merits, even though they are directed to independent and distinct inventions. In such a case the examiner will not follow the procedure described below and will not require restriction."

Reconsideration of the present application in view of the foregoing election and remarks is respectfully requested.

Respectfully submitted,

  
John J. Emanuele, Reg. No. 51,653  
Woodard, Emhardt, Moriarty,  
McNett & Henry LLP  
Bank One Center/Tower  
111 Monument Circle, Suite 3700  
Indianapolis, Indiana 46204-5137  
(317) 634-3456  
Fax No.: (317) 637-7561